



STATE BOARD OF EQUALIZATION STAFF LEGISLATIVE BILL ANALYSIS

Date Amended:	06/22/05	Bill No:	SB 503
Subject:	Public Records	Author:	Figueroa
Related Bills:	SB 234 (Runner) SB 280 (Campbell) AB 1655 (J. Horton)		

BILL SUMMARY

This bill would make the following changes to the disclosure of information maintained by specified state agencies, including the Board of Equalization (BOE):

1. Require written guidelines for accessing public records to be accessible from the homepage of its Web site.
2. Require that information provided in electronic format, when requested by any person, be made accessible for a minimum of three years through a link on the homepage of the Web site.

Summary of Amendments

The bill was gutted and amended to include the above changes. The previous version of this measure required state agencies to notify the California State Library when digital documents are published on its Web site to facilitate archiving.

Current Law

The **California Public Records Act**, or PRA (commencing with Government Code Section 6250), provides for public access to any record maintained by a state and local agency, unless there is a statutory exemption that allows or requires the agency to withhold the record. Confidential information, as specified within each tax or fee program, is exempt from disclosure under the PRA. However, the PRA requires that any reasonably segregable portion of a record must be made available after deletion of portions that are exempt from disclosure.

Under the PRA, public records are open to inspection at all times during the office hours of the state or local agencies and any person has a right to inspect any public record, unless exempt by statute. State and local agencies are required to establish written guidelines for accessibility of records. Any denial for request of public records, in whole or in part, must be in writing.

This staff analysis is provided to address various administrative, cost, revenue and policy issues; it is not to be construed to reflect or suggest the Board's formal position.

Government Code Section 6253.4 (a) requires that every agency adopt regulations stating the procedures to be followed when making its records available in accordance with this section. It also provides that specified state and local bodies (including BOE) shall establish written guidelines for accessibility of records. A copy of these guidelines shall be posted in a conspicuous public place at the offices of these bodies, and a copy of the guidelines shall be available upon request free of charge to any person requesting that body's records.

Government Code Section 6253.9 (a) provides that any agency that has information that constitutes an identifiable public record not exempt from disclosure pursuant to this chapter that is in an electronic format shall make that information available in an electronic format when requested by any person.

Proposed Law

This bill would amend Government Code Section 6253.4 by adding subdivision (c) to require that if a state or local body listed in subdivision (a) maintains an Internet Web site, the guidelines required by subdivision (a) shall be accessible from the homepage of its Web site through a link titled "Guidelines for How to Obtain Public Records."

This bill would also amend Government Code Section 6253.9 by adding subdivision (h) which provides that if an agency maintains an Internet Web site, information required to be provided pursuant to subdivision (a) that is also available to the agency in electronic format shall be made accessible for a minimum of three years from the homepage of the agency's Web site, through a link on the homepage titled "Performance-related and Other Public Record Information."

ANALYSIS

Background

Confidentiality Provisions. Various statutes make tax and fee payer information reported to the BOE confidential. For example, Section 7056 of the Revenue and Taxation Code, with certain exceptions, makes records submitted to the BOE in its administration of the Sales and Use Tax Law confidential. However, if the identity of the taxpayer can be protected, the Board provides redacted copies of otherwise confidential information in response to Public Records Act requests.

Open Meeting Requirements. The Bagley-Keene Open Meeting Act (commencing with Government Code Section 11120) requires that meetings of state bodies be conducted openly and that public writings pertaining to a matter subject to discussion or consideration at a public meeting be made available for public inspection. Disclosable public writings that are distributed to BOE Members prior to BOE meetings are made available upon request. The Bagley-Keene Act requires that state bodies provide notice of its meetings to any person who requests such notice in writing. The notice shall include a specific agenda for the meeting, which shall include the items of business to

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be transacted or discussed. The public is provided the opportunity to directly address the state body on each agenda item before or during the state body's discussion or consideration of the item.

Since the enactment of AB 1752 (Ch. 156, Stats. 2002, Migden), the BOE is also required to distribute public writings, except those involving a named tax or fee payer, that pertain to a topic under consideration at a public meeting to all persons who request copies, as well as post that information on the Internet, and make the writings available for public inspection at the meeting, prior to the BOE taking final action on that item. As the bill was making its way through the legislature, the protection of tax or fee payer information was included in the bill when the BOE raised concerns about making available on the Internet the briefs prepared for FTB cases heard by the Members of the BOE, which are disclosable public records. These briefs may contain detailed personal and financial information about taxpayers submitted as evidence in support or opposition to the appeal.

COMMENTS

1. **Sponsor and purpose.** The author is sponsoring this bill to increase disclosure of government performance and to leverage Public Request Act requests to increase public knowledge.
2. **The June 22, 2005 amendments** delete the entire contents of the bill that related to the California State Library, and substitute requirements for specified agencies, including the BOE, to post on the homepage of their Web site, a link to guidelines for obtaining public records and to maintain on their Web site for three years a listing of all public records responses that were furnished in electronic format, through a link on the homepage.
3. **The BOE currently maintains guidelines for obtaining public records on its Web site.** A link to those guidelines can be placed on the homepage.
4. **The BOE currently tracks Public Records Act requests, but does not differentiate those available or furnished in electronic format from non-electronic.** During the period January 1, 2002 through the present, in addition to providing many documents without receiving a formal PRA request, the BOE responded to approximately 375 formal PRA requests. Employee hours spent responding to these requests totaled over 9,300. Approximately 125,929 pages were produced in response to these requests. Of those pages, we did not track the number that were provided electronically. However, the majority of requestors do prefer to receive the documents in an electronic format to avoid the 10 cents per page charge for paper copies.
5. **Posting links on the Web site to each document furnished electronically in response to a Public Records Act request would result in increased workload and costs.** There would be additional storage charges to the BOE by Teale Data Center, which maintains the BOE Web site. Also, when posting documents electronically, the naming convention of each document must be non-taxpayer

specific. This naming convention will result in duplicate document postings further compounding the storage requirements that would be created by this bill.

6. **Documents supplied under Public Records Act requests may be outdated before expiration of the three-year on-line retention period specified in the bill.** This could result in viewers accessing and relying on information that is incorrect.
7. **Clarification of the bill is needed.** As drafted, it is unclear whether the requirement of posting a link to a document exists only for documents that were provided in an electronic format or whether a link must be posted if the request could have been provided in an electronic format.
8. **This bill may require sensitive taxpayer information to be posted on the Internet.** Under the Bagley-Keene Open Meeting Act, public but sensitive taxpayer information is not required to be posted on the Internet. However, if a PRA request for that information in an electronic format is made, this bill would require that the information be linked on the Internet, thereby making sensitive taxpayer information far more readily available to persons who may have no legitimate need for the information.
9. **Related legislation.**

SB 234 (Runner) would, among other things:

- Allow for the public disclosure of documents distributed to BOE Members on tax and fee matters, with personal information, as defined, redacted;
- Allow for the disclosure of lead and staff-recommended values on state assessesees, private railroad cars, and electric generation facilities;
- Prohibit an officer or employee of the BOE or the Franchise Tax Board (FTB) from releasing personal information, as defined, to the public; and
- Allow for the disclosure of returns and other information filed under the Timber Yield Tax Law to a member of the Timber Advisory Committee.

SB 280 (Campbell) proposes to add more specific restrictions to the release of taxpayers' personal or financial information by enacting the Taxpayer Privacy Bill of Rights under the FTB's laws.

AB 1655 (J. Horton) would, among other things, do the following:

- Require the Board to make public and readily available on the Internet all Board decisions and determinations.
- Allow the Board to sell copies of any decision or determination that is required to be made public.

COST ESTIMATE

This bill would result in some additional operating and personnel costs to the BOE in having to store additional documents on the Web site. The actual increased cost to the BOE cannot be determined without knowing how many records will be furnished in electronic format.

REVENUE ESTIMATE

This bill would not impact the state's revenues.

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